



Chicago Council of Lawyers

The public interest bar association

Comments on July 27, 2018 Proposed Consent Decree Reforming Chicago Police Department provided by Chicago Council of Lawyers Civil Liberties Committee

The Chicago Council of Lawyers Civil Liberties Committee has reviewed the provisions of the proposed consent decree between the Illinois attorney General's Office and the City of Chicago regarding reforms to the Chicago Police Department. In the Committee's view, the proposed consent decree would represent a significant step forward in improving the operations of the Chicago Police Department. The Attorney General's Office has done a good job in putting together this proposed decree and we applaud its efforts. However, we also recognize that in some areas the City has not been willing to go far enough in the proposed decree.

Generally, our Committee joins with the [ACLU and the other associated groups' suggestions for improving the proposed draft](#), as described in the accompanying release from those groups. We also agree with and endorse the comments submitted by the [Coalition for Police Contracts Accountability, also attached](#).

In addition, our Committee has the following observations and suggestions regarding the proposed consent decree:

1. **Reports on Pointing Weapons at People:** It is our understanding that the parties have agreed to submit to the Court the decision as to whether CPD officers should have to report each time they draw and point their weapons at an individual. We believe that the decree should expressly require CPD officers to report such incidents and CPD to publically report data on such incidents. Pointing a weapon at a person creates a significant risk of physical and mental injury that should have to be reported. The reporting requirement would not have to be onerous and could probably be accomplished by the addition of one or two lines on the already mandated contact cards. Tracking information about the frequency with which such incidents occur (both on a district wide basis and on an individual officer basis) is likely to provide significant information that would provide useful insights for supervisors, trainers, and the general public.
2. **Foot Chase Policy:** The current draft provides for a 180 day study as to whether a written policy is necessary regarding foot chases. We believe that here is little need for further study and no reason to delay immediate adoption of a foot chase policy along the lines that many other jurisdictions have adopted. As those policies elsewhere recognize, foot chases pose significant risks to both officers and suspects involved in them. Such chases are generally not justified in the absence of a significant and immediate risk to the public or officers involved. Such chases have also resulted all too frequently in the use of excessive (and sometimes deadly) force by pursuing officers. We know enough to mandate adoption of a policy now.
3. **Vehicle Pursuit Policy:** We know that the CPD currently has such a policy. We believe that policy should be expressly incorporated in the proposed consent decree so that it cannot be weakened without notice and an opportunity to comment.

4. Arrestees Access to Telephones: It is our understanding that the CPD currently does not make telephones available to arrestees until the conclusion of an initial interrogation period that can last hours or days. The proposed consent decree should mandate that phones must be made available to arrestees within one hour of their arrests or within a similarly unambiguously defined period.

5. Paragraph 19 gives the CPD 180 days to develop and institute a policy prohibiting the “transport of individuals with the intent to display or leave them in locations where known rivals or enemies live or congregate”. We believe there is no reason for a 180 day delay in adopting such a policy. The Consent decree should expressly prohibit “the transport of individuals with the intent to display or leave them in locations where known rivals or enemies live or congregate.” If CPD or its officers have any difficulty understanding that prohibition, they can propose any changes or clarifications in that policy to the Court or the Monitor within 180 days of the entry of the decree.

6. Paragraph 24 of the decree calls for community meetings at least every two months. We suggest that such meetings be required on a monthly basis.

7. Paragraph 180 states that CPD “will clarify in policy that flight alone, without any other basis for reasonable articulable suspicion or probable cause, does not justify use of a Taser against a subject.” We suggest that the paragraph should simply state that “flight alone, without any basis for reasonable articulable suspicion or probable cause, does not justify use of a Taser.”

8. Paragraph 219 related to body cameras should have an additional subparagraph “c” added requiring officers to also activate their audio when they activate their body camera”. We understand that the system currently used by CPD (and many other departments) effectively has a thirty second lag on activating the audio; this is reportedly because the camera continuously captures and preserves the last 30 seconds of video, but not audio, preceding activation of the camera by the officer. While we understand this current technical limitation (which hopefully will be eliminated in the future), there have instances in the past where cameras in squad cars apparently did not have their audio recording capabilities activated. Adding this provision would hopefully preclude any similar problems related to body cameras.

9. Paragraph 409 regarding the website for CPD officers to anonymously report officer misconduct should have the following additional sentence added to it: “Every class at the Academy will be informed about the website and a reminder will be sent yearly to all members of CPD.”

10. Paragraph 420 regarding reports to be investigated by COPA includes as subparagraph e(v) “Other weapons discharges and other uses of CPD-issued equipment as a weapon that result in

death or serious injury, at the COPA Chief Administrator’s discretion”. We would eliminate the last phrase giving the COPA discretion not to investigate in cases of death or serious bodily injury. All such cases should be investigated and reported on by COPA.

11. Paragraph 425 regarding reports of judicial findings that an officer was untruthful should have the following sentence added to it: “All information that a CPD member was untruthful should be shared with the Cook County Public Defender’s Office, the Cook County Attorneys’ Office, the Illinois Attorney General’s Office, the Federal Defender’s Office, and the U.S. Attorney’s Office.”

12. Paragraph 426(b) provides that a complainant will be notified within “60 days” of a final disciplinary decision. This period unduly delays such a notice. There is no justification provided for such a lengthy delay. The period should be changed to “14 days”.
13. Paragraph 477 provides that BIA and COPA will publish the Administrative Summary Report within “60 days” of the final disciplinary decision. We would shorten this period from 60 days to 14 days.
14. Paragraph 547 provides that CPD will make “reasonably available documents” related to reportable uses of force available to the appropriate investigative agency. We believe the phrase “reasonably available” provides too much discretion to the CPD, especially in light of past failures to make street files available to others. We would change the phrase to “any and all available documents” and make CPD spell out and justify any instances in which providing such documents would be unduly burdensome.
15. Paragraphs 552 through 557 require the creation of a Force Review Unit and a Force Review Board within CPD. We would add a requirement that both bodies be required to publish at least annual public reports regarding their work.
16. Paragraph 573 provides that supervisors are to assess performance of their subordinates using an “automated electronic system”. The paragraph requires the supervisors’ performance of this duty to be monitored for compliance. We recommend that that automated notices be sent to the next level up in the supervisory structure if the supervisors in the level below fail to fill out those monthly reviews of officers. This should reduce the chances that a practice will develop of supervisors ignoring or overlooking this duty.
17. Paragraph 586 requires that CPD review and revise forms on an annual basis regarding “use of force, arrests, interactions with individuals in crisis and the disciplinary process”. We suggest that a sentence be added to this paragraph requiring the Information Systems Development Group of the CPD to issue an annual report on their work, any recommendations they have put forward for changes, the responses they have received, and any changes that have been made to plans to implement changes.
18. Paragraph 593 requires that the judge pick from a set of two proposed monitors if the parties are unable to agree on the identity of the monitor. We believe that the judge should be given greater discretion to select from any of the proposed monitors who have responded to the request for proposal, rather than being limited to the two proposed by the two parties. This will give the judge greater latitude to pick the best possible monitor if the parties are unable to agree on one.
19. Paragraph 599 requires the parties to submit annual reports to the Court about the performance of the Monitor. The Decree generally provides that the Monitor’s work is not public and is not subject to FOIA requests. (See next point.) We recommend that these reports regarding the Monitor’s performance be made public, at least after the Court has had an opportunity to review the reports and (if appropriate) convene a hearing. The Monitor’s performance is a matter of great public concern and any issues related to that performance should be open to public notice and debate.
20. Paragraph 652 provides that records maintained by the Monitor will not be deemed public records and will not be subject to FOIA requests or discovery in any litigation. We believe this provision is overbroad. At a minimum we would suggest that the Monitor determine which of its records need to

be treated in confidence and withheld from public view, and that once the decree has been terminated, the Monitor's records should all be opened to public inspection.

21. Paragraphs 34 through 40 deal with CPD officers assigned to duty in schools. As the ACLU comments note, the standards governing both the assignment of officers to particular schools as well as the scope of the officers' duties within the schools need to be spelled out in much greater detail. Those details should either be included in the Consent Decree or CPD should be required to issue such detailed standards, after an opportunity for review and comment by the parties, the Monitor and the public.

22. Paragraphs 48 through 74 deal with "Impartial Policing Policies and Procedures". We believe that real life experiences should supplement the impartial police training to increase CPD officers' understanding and empathy for the difficulties faced by individuals living poverty and/or homelessness, individuals subject to discrimination (racial, religious, sexual, gender related, etc.), and individuals with disabilities (mental, physical or drug related). Ideally a program could require cadets to be "embedded" in a neighborhood for a week to familiarize them with such issues. They could be assigned to work with community groups providing services to such groups of people. Alternatively, some form of intense empathy training should be included in the curriculum if that is not practical.

23. Paragraphs 78 through 142 deal with the Crisis Intervention Program. We think it would make sense to recruit CPD candidates who may have undergraduate degrees in sociology, psychology, public health, counseling, or other similar disciplines to work as CIT officers. Alternatively we recommend that CPD consider supporting efforts by CIT officers to obtain degrees in those areas.

24. The Decree provides at various places for deadlines that are to be met. Presumably the Monitor will check for compliance with those deadlines and take appropriate measures to remedy any failures to meet the deadlines. However, the Decree should expressly require the Monitor to do so and to publically report on such efforts.

25. Paragraph 706 defines "Best Practices" and gives CPD the ability to adopt its preferred procedure if there is a conflict as to what constitutes a particular best practice. The definition should include a requirement that any option selected by CPD must not only mirror the purposes of the Decree, but also be consistent with applicable City Ordinances, State and Federal law.

26. Paragraph 728 defines "Exoneration" as a determination by clear and convincing evidence, that conduct described in the allegation occurred but is lawful and proper." We believe this definition is somewhat at variance with the commonly accepted understanding of that term, as there has been no finding of improper conduct nor any judicial clearing of such a finding. However, we recognize that the term "exonerated" is one of four findings that COPA uses at the conclusion of investigations to describe its conclusions. We think it would be more precise to use a term like "cleared", where the term "exonerated" appears in the Consent Decree; however, if that is not doable, we think the definition of "exonerated" should indicate that it is being used in the specialized sense utilized in COPA investigations.

27. Finally, we would recommend encouraging the CPD to adopt a Code of Ethics for Officers, similar to the Codes of Ethics that Doctors, Attorneys and other professionals and industries utilize. Even in instances where officers are cleared or "exonerated" of rule violations, there may be instances in

which it would be appropriate to spell out instances in which the officers may have acted legally, but less than ethically. In such instances, the ethical lapses should still be noted.

We would happy to discuss any of the foregoing comment with representatives of the parties or the Court. We appreciate your consideration of these comments.

Respectfully Submitted,

The Civil Liberties Committee of the Chicago Council of Lawyers

